

# EXHIBIT F

**AGREEMENT FOR PUBLICATION**

THIS AGREEMENT ("Agreement"), is made this 21 day of December, 2006, by and between the Code Revision Commission of the State of Georgia ("Commission" or "State") and Matthew Bender & Company, Inc., a member of the LexisNexis Group ("Publisher").

**WITNESSETH:**

This Agreement is entered into between the Code Revision Commission of the State of Georgia, as established pursuant to Official Code of Georgia Annotated § 28-9-2, and the Publisher pursuant to a Request for Proposals ("RFP") issued on October 3, 2006 by the Commission for the purpose of providing for the publication, maintenance, and distribution of the Official Code of Georgia Annotated ("Code") and other related services and products as provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Commission and the Publisher agree as follows:

**1. EDITORIAL DUTIES OF THE PUBLISHER**

**1.1 General.**

(a) The Publisher shall be responsible for the ongoing publication and maintenance of the Code, and shall perform and provide all services necessary for the preparation, editorial revision, publication and maintenance of the Code, in printed, electronic and any other form. Duties of the Publisher shall extend to all Code publications in whatever form or medium covered by this Agreement. The editorial and quality standards provided in this Section 1 shall apply to all supplements and replacement volumes prepared by the Publisher and to each updated general index prepared by the Publisher.

(b) The Publisher shall bear all editorial, publication and distribution costs associated with the production and maintenance of the Code, without any contribution, subsidy or expense by the Commission, or any consideration from the Commission other than the consideration provided for in this Agreement.

(c) Upon request of the Commission, the Publisher's editors or other representatives, as determined by the Commission, shall confer with the Commission or its staff, either in Atlanta, Georgia, or at the offices of the Publisher.

(d) Consultations between and decisions by the editorial staffs of the Commission and the Publisher shall be amply documented in memoranda prepared by each party, so as to provide documentation of and accountability for editorial decisions.

(e) The ultimate right of editorial control over all material contained in the Code shall be in the Commission, and in the event of any disagreement between the Commission and the Publisher over the material to be included, the decision of the Commission shall control.

(f) The Publisher shall be required to publish the Code in conformity with the Commission's *Publication Manual for the Official Code of Georgia Annotated* as provided by staff of the Commission to the Publisher, which manual shall reflect those specific content, style, and publishing standards of the Code as adopted, approved, or amended from time to time by the Commission or its staff pursuant to Code Section 28-9-3 of the Official Code of Georgia Annotated. Such manual is hereby incorporated into this Agreement by reference. The Publisher agrees that the contents and specifications of such manual are controlled by the Commission and that the information contained in the manual is neither confidential nor proprietary to any publisher nor does it constitute a trade secret of any publisher.

(g) The provisions contained in this Section I may be varied by mutual written consent of the Publisher and the Commission.

#### **1.2 Name of Publication.**

The name of the publication produced and maintained pursuant to this Agreement shall be the "Official Code of Georgia Annotated".

#### **1.3 Content of Publication.**

The material comprising the Code shall include:

- (a) All statutory provisions, annotations, captions, catchlines, headings, history lines, editorial notes, cross-references, indices, title and chapter analyses, research references, amendment notes, Code Commission notes, and other material related to or included in such Code at the direction of the Commission;
- (b) The United States Constitution and the Georgia Constitution, as amended;
- (c) General index, indices related to local and special laws, and conversion tables; and
- (d) Other material as provided in this Agreement.

The Code shall include the codification of Georgia laws prepared by the Code Revision Commission and The Michie Company and enacted by the General Assembly of Georgia by an Act approved September 3, 1981 (Ga. L. 1981, Ex. Sess., p. 8), and subsequent current legislative enactments of the General Assembly of Georgia.

#### **1.4 Organization, Arrangement and Numbering.**

The Publisher shall maintain the organization and arrangement of the current Code in all supplements and replacement volumes published under this Agreement. In addition, the Publisher shall continue the section numbering system currently in use in the Code. The United States Constitution and the Constitution of Georgia, in place of the regular numbering system should carry, at the top of the page as well as at the beginning of each article, section, paragraph, or amendment, the appropriate article, section, paragraph, and amendment numbers. The Publisher shall provide for descriptive headings known as catchlines to denote the contents of a Code section. Such catchlines shall be printed in boldface type to the right of a Code section number. The Publisher shall also include any catchlines at the subsection, paragraph, subparagraph, division, or subdivision level of any Code section as contained in legislation enacted by the General Assembly and such catchlines shall be printed in italics or large and small capitals within the text of a Code section. The Publisher shall also provide for descriptive headings known as captions to denote the contents of a title, chapter, article, part, subpart, or other subdivision of the Code. The form and style of the organization, arrangement, catchlines, and captions shall be subject to the approval of the Commission.

#### **1.5 User's Guide.**

The Publisher shall provide a User's Guide in the bound Volume 1 of the Code containing instructions for the use of the Code, which shall be usable and easily understood by both lay and legal professional persons. A reference to such User's Guide shall be included in each other bound volume of the Code. A guide for users shall be set out in other parts of the Code or other publications under this Agreement, as requested by the Commission.

#### **1.6 Case Annotations.**

(a) The Publisher shall compile a complete set of annotations to each statute appearing in the Code from all court cases that are available up to the date of adjournment *sine die* of the regular session of the General Assembly. Case annotations shall include all published opinions of the Georgia Supreme Court and the Court of Appeals of Georgia, and all published opinions of the United States Supreme Court and other federal courts that arose in Georgia and construed Georgia general statutes, whether such decisions favor plaintiffs, defendants, or the prosecution. Additional annotations to those required by this Paragraph may be included where determined useful as determined or approved by the Commission. References to the annotations shall include both the official publication and the national reporter system reference where available.

The official state or U.S. citation shall be given first followed by the unofficial citation. The form of the annotations shall be subject to the approval of the Commission.

(b) Every case decided by the courts mentioned in subparagraph (a) of this Paragraph shall be read by the Publisher's editors for the purpose of preparing annotations for the Code and the Publisher's editors shall extract from such cases all direct constructions and applications. Annotation material shall be extracted from the cases showing reference to all pertinent amendments, additions, and deletions in statutory and constitutional provisions subsequent to the date of the decision being annotated. In reading cases and extracting material therefrom, the Publisher's editors shall avoid the inclusion of long factual annotations where they do not bear directly upon the statute involved. The Publisher's editors shall take from the cases constructions concerning constitutionality, purpose, intent, and meaning of words and phrases as well as illustrations as to what a particular provision applies and to what a particular provision does not apply.

(c) After the annotations have been extracted from the cases, they shall be completely edited and arranged under appropriate headings. Unless otherwise appropriate, constitutional constructions shall be arranged first, followed by annotations concerning purpose, meaning, and application of the particular provision. Larger annotations shall be given appropriate analysis lines which shall be selected to cover the content of the material. Where headings are supplied for annotations, such headings shall be carried so as to present a scheme at the beginning of the annotated material. After a logical arrangement of annotation material has been made, the individual annotation or paragraph shall be appropriately catchlined, the catchline stating in a few words the general content of the annotation.

(d) The Publisher shall verify each completed annotation, including the name and citation of the case and its arrangement and catchline.

#### 1.7 Research References.

(a) The Publisher shall include the following research references in the Code:

(1) Collateral references to American Law Reports, American Jurisprudence 2nd, American Jurisprudence Trials, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, Corpus Juris Secundum, Uniform Laws Annotated, related legislation from the federal government, law reviews and other research aids currently included in the Code;

(2) Annotations to opinions of the Georgia Attorney General;

(3) Cross-references to related Code sections and provisions; and

(4) Any new annotations as determined by the Publisher's editorial staff and approved by the Commission, or as required by the Commission.

(b) The Publisher shall update all existing research references and historical data, and check for continuing validity of any existing references, annotations and editor's notes before publication of the annual supplements and replacement volumes.

(c) The form, arrangement, and content of research references shall be subject to the approval of the Commission.

### **1.8 Legislative History.**

The Publisher shall insert immediately after each Code section the source and history of that section, including the volume, page number, and section number of the Georgia Laws for the original Act and all amendatory Acts relative to such section, the 1933 Code or any prior officially enacted Code, or the court decision citation or other source of such section, including an indication of the English common law as a source. Historical notes shall be added when the source of the section cannot be simply or adequately expressed by using the volume, page number, and section number of the Georgia Laws. In addition, a note shall be included at an appropriate location within the Code which relates the history of Georgia's Codes and which specifically refers to the incorporation of principles from Georgia case law and from English statutes in the Georgia Code of 1863. The Publisher also shall insert the bill number or bill numbers constituting the source of the section and the amendments or modifications to the section for all Acts enacted in 2005 or later. The form of the history lines shall be subject to the approval of the Commission.

### **1.9 Notes.**

The Publisher shall provide for editor's notes, amendment notes, Code Commission notes, effective date notes, and such other notes as may be required by the Commission. Unless otherwise directed by the Commission, such notes shall be placed at the end of Code sections for purposes of explanation of unusual situations, description of changes, correction of errors, reference to uncodified provisions of Acts, delayed effectiveness, and other purposes. Such notes shall be organized and styled in accordance with the Publication Manual for the Official Code of Georgia Annotated and as approved by the Commission.

### **1.10 Volume Index.**

Each volume of the Code containing statutory titles shall contain an individual volume index covering the material contained in such volume. Each volume index shall be prepared in accordance with the specifications for the general index. Individual volume indexes shall not be revised in the annual supplements to the volumes but shall be revised and updated when a volume is recompiled and republished.

### 1.11 General Index.

(a) The general index shall be updated and published annually. The general index shall be published in two (2) softcover volumes in a format similar to the current Index, unless otherwise specified by the Commission. Repealed laws shall be deleted from the general index and references to new laws or new subjects in amended laws shall be integrated annually. General index volumes will be bound with flexible, perfect bound covers. The general index shall be prepared in accordance with the following general specifications:

(1) Lines will be produced by an actual reading of the body of the statutes and other material, not merely from headings or catchlines;

(2) All sections of the Code, appropriate statutes, and other appropriate material will be separately indexed, although blanket references may also be used where a group of sections includes the same general subject matter or where separate indexing of each section will serve no useful purpose;

(3) The headings used in the index shall not be a mere alphabetical arrangement of those used in the body of the statutes and other material. In choosing index headings, the indexers shall, whenever practical, break down the large divisions employed by the compilers of the statutes and arrange index lines under such group headings as the user may reasonably be expected to look for in an index prepared on an alphabetical or catchword plan. All major terms used in the statutory portion of the Code shall be represented in the index. All short titles used in the statutory portion of the Code shall be represented as main headings in the index and shall also be compiled in a separate table index preceding the general index entries;

(4) Headings, subheadings, and the lines and sublines under the headings and subheadings shall be arranged alphabetically throughout;

(5) Where matter may be reasonably indexed under more than one descriptive word, it shall be indexed under each of such descriptive words either by a direct reference or a cross-reference, and no section shall be indexed in less than two entries;

(6) Under each heading the lines will begin with some descriptive word, so as to be readily located without the necessity of scanning everything under such heading;

(7) The index shall include popular names of Acts;

(8) All cross-references shall be made:

(A) Wherever a heading consists of an expression for which there is a common synonym;

(B) Whenever there is a group of lines (one flush line and two or more indented lines) which, having been put under a chosen heading, might also properly be put under other headings; the object being to gather all related matter together in one place, with cross-references in all the other places, rather than scattering the lines around, with some under one heading and others under different headings; but this will not apply to single lines, which shall be duplicated in all appropriate places;

(C) Where matter under a heading might reasonably be expected to be found under some other heading; and

(D) In all other instances, where, in the judgment of the indexers or the Commission, cross-references would be helpful to the user.

(b) Adequate precautions shall be taken to see that all cross-references correctly refer to the place intended and are not of the "blind" or "double jump" type, leading either to nothing or to another cross-reference.

(c) The Publisher shall annually provide the updated general index upon its completion to the Commission in an electronic format acceptable to the Commission as readily usable for the purposes of research and generating a display and printout of how any one or more sections are indexed.

#### **1.12 Local and Special Law Index.**

(a) A complete index to all local and special laws and general laws of local application shall be published as a part of the Code. The local and special laws index shall contain references to the volume and page of the Georgia Laws at which all local and special laws may be found.

(b) Entries relating to each municipality, county, authority, court, or other topic shall be divided into two sections. The first section shall contain all currently effective local and special laws pertaining to such topic and each amendment to such laws, even though any such amendments may have been superseded by a later amendment. The second section under each topic shall contain references to all local and special laws pertaining to such topic which have been repealed and which are no longer in effect. In the event that the name of any municipality, county, authority, court, or other topic for which index entries are made in the local and special laws index has been changed, index entries shall be made under the current name and cross-references shall be made to former names.

(c) Care shall be taken to ensure consistency in the manner in which Acts of similar subject matter pertaining to the same topic are indexed.



(d) The local and special laws index shall also include an index of general laws of local application, arranged according to the census under which they were originally enacted. Such local and special laws index shall also include a table showing the population of Georgia counties according to each census beginning with the United States Decennial Census of 1920 and shall likewise include a list of the population of each county in order according to the population of each county according to the most recent census available.

(e) As used in this Paragraph or elsewhere in this Agreement, the term "local and special laws" shall include laws enacted by the General Assembly of Georgia which, by their terms, are of less than state-wide application and shall also include ordinances and resolutions adopted by municipalities and counties under their home rule powers and which are published in the Georgia Laws, local amendments to the Constitutions of Georgia, miscellaneous resolutions adopted by the General Assembly which are not codified but which appear in the Georgia Laws, and other laws and resolutions which appear in the Georgia Laws but which are not included in the general index.

#### **1.13 Tables.**

The Publisher shall publish as a part of the Code parallel reference tables between the Code, the Code of Georgia Annotated (published by the Harrison Company), the 1933 Code, and all previous Codes, and between previous Constitutions of Georgia. In addition, the Publisher shall include such additional reference tables as the Publisher determines to be appropriate with the approval of the Commission, or as requested by the Commission.

#### **1.14 Constitutions of the United States and the State of Georgia.**

(a) The Publisher shall include in the Code the Constitution of the United States and the Constitution of the State of Georgia, with appropriate annotations and references to those Constitutions in all respects conforming to the statutory annotations set forth in Paragraphs 1.6 and 1.7 of this Agreement; however, annotations to the United States Constitution for federal court cases need only refer to those cases that arose in the State of Georgia and construed general Georgia statutes or Georgia constitutional provisions. The Publisher shall prepare separate indices for each Constitution.

(b) As a part of preparing the supplements and replacement volumes for the 2007 general session of the Georgia General Assembly, the Publisher shall provide for the replacement of the volume containing the Georgia Constitution which shall be revised to include a history line for each Constitutional provision containing its origin with ratification of the 1983 Constitution and any subsequent amendments. Such history line shall be annually updated as appropriate by the Publisher in subsequent years. The form of the history line shall be subject to the approval of the Commission.

#### **1.15 Limitations of Editorial Changes.**

(a) In performing editorial services, the Publisher shall copy the exact language of the text of those statutes as it appears in the enrolled acts sent to the Publisher by the Commission staff, except as otherwise specifically instructed by Commission staff, including, but not limited to, changes to the statutory text under the authority of Code Section 28-9-5.

(b) The Publisher shall call to the attention of the Commission staff any Code sections or provisions that it believes may have been repealed by implication either by judicial action or by enactment of subsequent legislation or that the Publisher believes may keep the laws from being accurate, clear, and harmonious, as for example statutes that are obsolete; that are inconsistent, duplicating, or overlapping with others; that contain grammatical or typographical errors; or that are otherwise defective in form, substance, or relation to other statutes affecting the same subject. The Publisher shall take only such action as the Commission staff may approve, if any.

(c) The Commission, from time to time, shall confer with the Publisher's editors and shall instruct the editors as to the manner of handling the individual suggestions and specify whether to incorporate suggested changes and additions into the Code or whether such suggestions and changes must be effected by the General Assembly of Georgia.

#### **1.16 Editor's Qualifications.**

All editors and indexers involved in the preparations of upkeep materials for the Code, other than copy editors and index technicians, shall be lawyers. As used in this Paragraph, "lawyer" means a graduate of an accredited law school admitted to the practice of law in one or more jurisdictions. All copy editors and index technicians must have been appropriately trained and must be supervised by lawyer editors. The Publisher shall designate one (1) lawyer editor for primary editorial responsibility of the Code. The Publisher shall notify the Commission of any staffing changes in editors, indexers, and other key staff involved in producing the materials for the Code within ten (10) days of such change.

#### **1.17 Prepublication Review.**

With respect to supplements, replacement volumes, and updates of the general index, the Publisher shall afford the Commission an opportunity for prepublication review and correction of errors therein. Such prepublication review process shall meet the following standards:

(1) The Publisher shall be responsible for proofreading and other quality control procedures sufficient to ensure that such materials accurately incorporate the enactments of the General Assembly and meet the requirements of this Section 1;

(2) The purpose of prepublication review by the Commission shall not be to serve as a primary proofreading or quality control function but to ensure to the Commission's satisfaction that the Publisher has properly carried out its proofreading and quality control procedures;

(3) Submission of material to the Commission for prepublication review shall be according to a schedule approved in advance by the Commission so as to allow the Commission ample time for review; and

(4) Any errors or deficiencies noted by the Commission during prepublication review shall be corrected by the Publisher prior to publication at no charge to the Commission.

## **2. PUBLICATION DUTIES OF THE PUBLISHER.**

### **2.1 General.**

The Publisher shall provide all printing and distribution services necessary to publish and distribute the Code and all other publications described in this Agreement, in printed, electronic and any other form. The Publisher shall secure all materials needed to compile the Code, except copies of legislative acts in printed, electronic, or both printed and electronic format furnished by the Commission. The Publisher agrees to maintain at all times an adequate staff and adequate publishing and distribution facilities necessary to carry out its duties under this Agreement.

### **2.2 Supplements.**

Supplements shall, as directed by the Commission, contain legislation of a general and permanent nature enacted and approved at the preceding regular session of the Georgia General Assembly, as well as legislation of a general and permanent nature enacted and approved at any preceding special session, and not yet included in the bound volumes of the Code. For the benefit of Code users requiring supplemental information more frequently than annually, material and data for ad-interim update between publications of supplements may be prepared and sold separately by the Publisher; provided, however, the Commission retains the right to require the Publisher to publish interim updates within a reasonable period containing general legislation enacted at a special session of the General Assembly.

### **2.3 Replacement Volumes.**

(a) When supplements become inconveniently large or when major legislation affects the contents of bound volumes, the Publisher may recompile and replace the affected bound

volumes with the prior consent and approval of the Commission. The Commission staff shall make an annual recommendation to the Commission regarding a schedule of replacement volumes for the following general session updates. Prior to this, the Publisher may make recommendations to Commission staff regarding such schedule. The Publisher shall schedule for publication replacement volumes as approved by the Commission.

(b) If the content or arrangement of a volume proposed as a replacement volume is different from the content or arrangement of the volume to be replaced, the changes shall be specified by the Publisher and subject to approval by the Commission. The present style of numbering volumes shall be continued, unless a change is authorized by the Commission. The Commission also reserves the right to change volumes to be replaced if circumstances, such as legislative actions, make those changes desirable.

(c) The Publisher, through an experienced editorial staff, shall review material in each volume before its replacement and refer to the Commission or its staff any laws in such volume that it considers to be archaic, obsolete or unconstitutional. Any archaic or obsolete research references or annotations shall be removed before replacement, with the approval of the Commission.

(d) The Publisher shall possess sufficient production capacity to provide replacement volumes in a timely manner as directed by the Commission. Those volumes shall match the current publication in materials and form as closely as possible. The publication of all replacement volumes and their retail prices shall require the prior approval of the Commission.

#### **2.4 Inventory of Additional Code Sets or Volumes.**

At all times during the period of this Agreement the Publisher shall keep available a reasonable supply of complete sets of the Code and supplements and individual volumes of the Code and supplements, to meet the needs or requests of users for purchase or replacement, or shall have the ability to produce and distribute a complete set or any individual volume that is requested for purchase or replacement within two (2) weeks from the date of the request. The Publisher shall be required to provide an accounting of available inventory at any time, upon request of the Commission.

#### **2.5 Internet Access to Georgia Code.**

(a) The Publisher shall provide access to the Code on the Internet as follows:

(1) The Publisher shall publish and maintain an unannotated Code on the Publisher's Internet site, at no charge to the Commission or the State. The Commission and the State Bar of Georgia shall be authorized to provide for a weblink from the website of the Georgia General Assembly and the State Bar of Georgia to such unannotated Code at no charge.

There shall be no charge to users for accessing the unannotated Code on the Publisher's Internet site. The Publisher shall track usage of the Code on its Internet site, and after each year of publication, the Publisher shall provide usage reports to the Commission with usage and the effect, if any, on subscriptions to the Code in print and on CD-ROM.

(2) The online unannotated Code shall be accessible to the public 24 hours per day, 7 days per week. In no event shall a user be required to register, log-in, or establish a username or password in order to access the unannotated Code. The online unannotated Code shall include the text and numbering of all Code sections; numbers of titles, chapters, articles, parts, and subparts; catchlines, captions, and headings; and history lines. The online unannotated Code shall be fully searchable, including text in the catchlines, captions, and headings and shall also be accessible by links from the table of contents.

(3) For any publication on the Internet of the unannotated Georgia Code or the Code, the Publisher shall provide appropriate notices of the State's copyright interest. All visitors to the Internet site shall be notified that reproduction of any portion of the unannotated Georgia Code or the Code, other than Code section text and numbering, is prohibited unless permission has been granted by the State. The copyright notice shall appear at the outset of each "session" with the unannotated Code, and each screen shall display the copyright. The form and content of the notice shall be as approved by the Commission.

(b) The Publisher shall provide the Commission with the data for an unannotated Georgia Code to be used on an Internet site maintained by the State, if requested by the Commission.

#### **2.6 Electronic Version.**

(a) The Publisher shall provide to the Commission in electronic format the current Code. Such electronic format shall be approved annually as to format, content, and coding by the Commission prior to its production by the Publisher so as to ensure that it is usable for the purposes desired by the Commission. Without limiting the generality of the foregoing, it is contemplated that these purposes shall include computerized bill drafting, computerized search and retrieval and printing of all materials in the Code, and computerized legal research. It is contemplated that the electronic format furnished will completely eliminate the state's need for the separate statutory computer data base heretofore maintained by the state.

(b) The electronic format of the Code furnished pursuant to subparagraph (a) of this Paragraph may be used by the State in any manner in which it deems fit, provided that such electronic format shall not be used in any manner to generate printed volumes or sets of the Code which would compete with the printed volumes or sets produced by the Publisher except as specifically authorized by Paragraph 8.2 or by subparagraph (c) of this Paragraph.

(c) Upon and after the termination of the Publisher's right to sell and distribute the Code under this Agreement, or upon and after the state's award of a successor agreement for publication of the Code and within the final twelve (12) months of the Publisher's right to sell and distribute the Code under this Agreement, the Commission may furnish another successor publisher with whom it contracts originals or copies of the electronic format Code furnished pursuant to subparagraph (a) of this Paragraph for the successor publisher's use in the performance of its Agreement.

### **2.7 Database Compare.**

The Publisher shall provide for the electronic comparison of its Code database with the database of statutory text of the State. The comparison shall include all of the statutory text and Code section numbering. The comparison shall result in a document containing discrepancies between the databases including all material that is in the Publisher's Code database but not in the State Code database and material that is in the State's Code database but not in the Publisher's Code database.

### **2.8 CD-ROM.**

(a) The Publisher shall:

(1) Publish, license and distribute a CD-ROM Edition of the Code. The Publisher shall render and perform all services necessary for the preparation and publication of the CD-ROM, and shall bear all editorial, publication and distribution costs, without any contribution, subsidy or expense by the State. General requirements for the contents and the publication of the CD-ROM are as stated in Exhibit C, which is incorporated into and made a part of this Agreement.

(2) Bear sole responsibility to assure that the statutory text and other materials on the CD-ROM are accurate and are in compliance with this Agreement.

(3) Provide the Commission with a list of the subscribers to the CD-ROM Edition in the same manner as required for the Code under Paragraph 2.10.

(b) There shall be no charge for subscriptions to the CD-ROM Edition for State Government Subscribers. State Government Subscribers may use subscriptions to the CD-ROM Edition on stand-alone computers or on local area networks or intranets without incurring any charges therefor, including concurrent user charges, regardless of the number of concurrent users. Any department or agency of the state which desires to reproduce and distribute or sell copyrighted materials from the Code in printed book format as authorized by Paragraph 8.2 and which is a State Government Subscriber may download and prepare for printing a copy of such material from the CD-ROM which the department or agency receives as a State Government Subscriber.

(c) For purposes of this Agreement, the term:

(1) "CD-ROM" means compact disc-read only memory format, and shall also mean and include DVDs (Digital Versatile Discs).

(2) "CD-ROM Edition" means the CD-ROM or DVD version of the Official Code of Georgia Annotated together with other data bases and retrieval software contained on a CD-ROM or DVD, or both, as published by the Publisher pursuant to this Agreement.

(3) "General Subscribers" means all Subscribers who are not State Government Subscribers.

(4) "Hypertext linking" means the ability to directly access referenced material contained on the CD-ROM Edition from a referencing citation on the CD-ROM Edition.

(5) "State Government Subscribers" means subscribers which are departments, agencies, divisions, authorities, entities, or officials of the state government of the State of Georgia, and shall include the Office of Legislative Counsel and other offices, officials, and employees of the General Assembly of Georgia and each house thereof, members of the General Assembly of Georgia, Justices of the Supreme Court of Georgia, Judges of the Court of Appeals of Georgia, judges of the superior courts, judges of the state courts, judges of the probate courts, judges of the juvenile courts, chief magistrates of the magistrate courts, district attorneys, the Attorney General and the Department of Law, the state law library, county law libraries, libraries of law schools, colleges, and universities which are units of the University System of Georgia, and any other entities, including nonprofit organizations, or groups of officials or employees of the State of Georgia or of any counties, municipalities, boards of education, authorities, or political subdivisions which have been designated by the Code Revision Commission as State Government Subscribers.

(6) "Subscriber" means any individual or any private, government, or other entity which has executed a Subscription Agreement with the Publisher for the license and use of the CD-ROM Edition, and includes General Subscribers and State Government Subscribers.

(7) "Subscription Agreement" means an Agreement between the Publisher and any private, governmental, or other entity or person for the license and use of the CD-ROM Edition.

### **2.9 Errata Notices.**

Whenever the Commission or Publisher discovers any errors or omissions in the published materials comprising the Code, the Commission may direct the Publisher to correct such errors and omissions, at the Publisher's expense, through the distribution of errata notices, paste-in correction sheets, or such other corrective matter as may be directed by the Commission. The Publisher shall notify the Commission staff immediately upon discovery of any errors or omissions that may warrant an errata notice.

### **2.10 Subscriber Information.**

The Publisher shall furnish the Commission on an annual basis and upon request by the Commission the number of subscribers to the Code. The Publisher also shall furnish the Commission with a listing of persons or entities subscribing to the Code, upon request of the Commission or its staff. The subscriber list shall be furnished in both printed form and in a data processing medium reasonably designed to facilitate use by the Commission. The Publisher agrees that the Commission may furnish the subscriber list to any successor publisher to facilitate a transition between publishers and waives any rights in the subscriber list to the contrary. The Commission agrees not to use the subscriber list for purposes of marketing any product competing with the Code or any Code product.

### **2.11 Subscriber Assistance.**

(a) The Publisher shall maintain a toll-free telephone number and fax number and an e-mail address at which Code subscribers and other purchasers may consult the Publisher concerning billing, editorial, or index questions. The Publisher also shall provide postage paid response and suggestion cards similar to those currently in use for the convenience of subscribers and other purchasers.

(b) The Publisher shall annually provide the Commission with a summary of problems reported to it concerning the Code.

### **2.12 Online Access for Legislators.**

The Publisher shall arrange for its affiliate LexisNexis to provide members of the Georgia General Assembly with access through Lexis.com to fully searchable Georgia primary law materials and federal statutory and case law materials for use by the legislators only in their official duties directly related to their elected office. Such access shall be provided at no charge to the members. The materials included are as listed on Exhibit E, attached hereto and incorporated herein, and are subject to change as LexisNexis adds or deletes material in this menu for distribution to its customers at large. An authorized agent of the Commission shall sign on behalf thereof LexisNexis's regular terms and conditions for use of Lexis.com for



purposes of this paragraph and shall certify to LexisNexis the names of those members to whom such access is provided. The online service shall be available annually November 1 through the end of each year's legislative session and will be accessible through a customized webpage created specifically for the Georgia General Assembly members.

### 3. SPECIFICATIONS.

(a) The Publisher shall publish the Code in the number of volumes approved in writing by the Commission. The volumes shall continue to be similar to the volumes of the present Code in style, format, appearance and quality. The final decision as to contents of each volume shall rest with the Commission as communicated by the Commission staff. The Code shall be divided so as to equalize the number of pages for the volumes as closely as possible. No volume shall have less than 700 pages or more than 1,400 pages except upon approval of the Commission. The Publisher shall attempt to effect a uniform thickness for individual volumes. Different weights and bulk of paper may be used to accomplish this, but the Commission shall approve all paper differing from the standard specified prior to actual printing. The printing specifications shall be the same as the printing specifications for the Code in effect on the day before the effective date of this Agreement. Larger or smaller volumes in particular instances may be published with the written approval of the Commission through the Commission staff.

(b) All sets of the Code, replacement volumes and supplements shall be made to conform in all respects to existing volumes of the Code. Materials shall be equal or superior quality to existing volumes. Books shall be Smyth sewn in sheets folded, where possible, in thirty-two page signatures and on three, seven-sixteenth tapes, or sewn by a process to produce a volume as strong as that commonly known as "Library Editions." Each signature shall be collation marked.

(c) End sheets shall be 80-lb. offset with a grain running parallel with the binding edge, and the first and last signatures shall be tipped and reinforced using one inch gummed Cambric, gathered, sewn using textbook thread, smashed, glued off, resmashed, three sides trimmed, rounded and backed with the backing not to exceed 1/4 inch; and, also, lined up using legal super which extends at least 1/4 inch beyond the reinforced area, covered with heavy Kraft paper glued affording proper adhesion to allow loose-back casing in. Mercerized headbands shall be applied and the book shall be cased in using suitable adhesive to prevent warpage and to penetrate Pyroxylin cloth.

(d) All of the material used in binding or printing that has a grain shall have the grain running parallel to the binding edge of the book.

(e) The binders shall be so designed that when the volume is opened for use, it will remain open without further physical support and will afford a full view of the page to the reader.

(f) The back cover shall have a reinforced pocket to accommodate pocket part supplements. A stub is to be left in the binding of each volume to accommodate pocket part supplements of no less than 1/4 the size of that volume or 300 pages, whichever is greater, so that the binding of the volumes will not be strained; provided, however, that the requirements of this subparagraph may be amended by mutual consent of the Publisher and the Commission.

(g) The case shall consist of such material as shall be approved by the Commission, with the advice of the Publisher, but in no event shall the case be of a quality less than Pyroxylin coated Buckram equal to "F" grade Legal (or equal) over No. 18 binders board with the grain running parallel to the binding edge.

(h) All words and numbers on bindings shall be stamped in imitation gold foil of permanent nature. The corners of the case are to be square with a minimum of 1/2 inch in-turning on all four edges and the case lining strip is to be of suitable material for loose-back binding.

(i) The paper, including the weight, finish, and color thereof, to be used in printing shall be specified by the Commission with the advice of the Publisher. The Publisher shall furnish paper samples to the Commission.

(j) The color and texture of the binding cloth shall be selected by the Commission after consultation with the Publisher. The Commission shall approve the design, materials, stamping, etc., after receiving samples submitted by the Publisher. Each bound volume shall be individually shrink wrapped or boxed in such a manner as to protect the volume from dust and damage during storage and shipment.

(k) Unless otherwise directed by the Commission, all supplements shall be in all respects of equal quality with the bound volumes of the Code except that a different weight or thickness of paper may be used, if approved by the Commission.

(l) The specifications contained in this Section 3 may be varied by mutual written consent of the Publisher and the Commission.

#### 4. SCHEDULES AND DELIVERY.

##### 4.1 Annual Updates.

Supplements, replacement volumes, an updated general index, and any other applicable update materials shall be prepared and shipped by the Publisher no later than 75 days following the receipt by the Publisher of the text of all enrolled acts enacted at each regular session of the

General Assembly (exclusive of approval dates, page numbers, or other material added after adoption by the General Assembly) in an electronic format specified by the Commission, beginning after the 2007 regular session of the General Assembly and annually thereafter during the term of this Agreement.

#### **4.2 Internet Access to Georgia Code.**

The online unannotated version of the Code, as provided for in Paragraph 2.5, shall be made available no later than January 15, 2007. Such online version shall be updated no later than thirty (30) days following the date of publication of the annual supplements and other update materials.

#### **4.3 Electronic Version.**

The Publisher shall deliver the electronic version of the Code, as provided for in Paragraph 2.6, no later than thirty (30) days following the date of publication of the annual supplements and other update materials, or at such earlier time as the electronic version may otherwise be distributed to search service companies. The electronic version shall be delivered to the Commission as directed by the Commission staff. The Publisher agrees to provide such assistance as may be necessary to enable the Commission to make full use of the electronic version.

#### **4.4 Database Comparison.**

The Publisher shall complete the database comparison provided for in Paragraph 2.7, including a list of any errors which may warrant any errata notices, and provide the same to the Commission no later than thirty (30) days following the date of publication of the annual supplements and other update materials.

#### **4.5 CD-ROM.**

The Publisher shall make available an updated version of the CD-ROM required in Paragraph 2.8 no later than thirty (30) days following the date of publication of the annual supplements and other update materials, or the beginning of the next calendar quarter following such publication, whichever is later.

#### 4.6 Errata Notices.

Any corrections as provided for in Paragraph 2.9 shall be made to the Publisher's database and published and shipped no later than thirty (30) days after the date the Commission directs the Publisher to make such corrections.

### 5. PRICES.

#### 5.1 Setting of Prices.

(a) Except as otherwise provided in subparagraph (b) of this Paragraph, on and after July 1, 2007, and for the remainder of the term of this Agreement, unless otherwise adjusted pursuant to Paragraph 5.2, the prices charged by the Publisher shall not exceed the prices specified in Exhibit D, which is incorporated into and made a part of this Agreement. From December 1, 2006 through June 30, 2007 the Publisher may sell any inventory of the Code at the prices approved by the Commission in July 2006 pursuant to the Agreement dated December 2, 1998 between the State of Georgia and LEXIS Law Publishing.

(b) From December 1, 2006 through June 30, 2007, the Publisher may sell any inventory of the Code that the Publisher purchases from the preceding publisher pursuant to Section 2-6-7 of the Agreement dated December 2, 1998 between the State of Georgia, acting through its Code Revision Commission, and LEXIS Law Publishing at the prices approved by the Commission in July 2006 pursuant to such 1998 Agreement; provided, however, that this provision shall be inapplicable in the event that the Publisher is the same as, or a successor-in-interest to, the preceding publisher.

(c) The Publisher shall provide annual updates at no charge to those State entities having subscriptions on November 15, 2006. For purposes of this subparagraph, "State entity" is defined to include only:

(1) Departments, agencies, divisions, authorities, entities, or officials of the state government of the State of Georgia, and includes the Office of Legislative Counsel and other offices, officials, and members and employees of the General Assembly of Georgia;

(2) The Justices of the Supreme Court of Georgia, Judges of the Court of Appeals of Georgia, and the judicial circuits, state courts and superior courts;

(3) The state's district attorneys and solicitors, and the state's public defenders; and

(4) The law schools, colleges, and universities which are units of the University System of Georgia.

Such annual updates will be provided for the duration of this Agreement.

## 5.2 Price Changes.

(a) In the absolute and sole discretion of the Commission, the prices fixed in Paragraph 5.1 may be adjusted once a year by the Publisher effective on or after the date of publication of annual supplements or other update materials of each year beginning in 2008, in light of all relevant factors. Relevant factors shall include but not be limited to: (1) quality of work performance, including but not limited to accuracy and editorial quality of page proofs submitted for prepublication review, quality of the final published product, and number and severity of errata sheets required after publication; (2) number of days that the previous year's annual supplements and update materials were shipped earlier than the 75 days required in Paragraph 4.1, if any; (3) rate of inflation; (4) cost of labor and materials; (5) quantity of printed pages; (6) rates of local, state, and federal taxes; (7) energy costs; and (8) extra or extraordinary functions required by the Commission to be performed by the Publisher for the benefit of the general public, the state, or both. The Commission may, in its absolute and sole discretion, approve a price change initiated by either party. The Publisher shall provide the Commission with all relevant information relating to a proposed price change.

(b) Both parties to this Agreement recognize that the provisions herein governing time of availability and accuracy of published materials are of the essence. Both parties recognize that failure of the Publisher to comply with such provisions may decrease the value of the Code to subscribers. Accordingly, in the event of material failure of the Publisher to comply with such provisions, the Commission is authorized in its sole discretion (after notice to and consultation with the Publisher) to decrease any or all of the maximum prices otherwise chargeable by the Publisher, so as to compensate subscribers reasonably and proportionately for any such decrease in value. However, such a decrease shall not apply if the failure to comply is due to the Commission's acts or omissions or is due to any matter beyond the control of the Publisher.

## 5.3 Discounts.

The failure of the Publisher to have the supplements, replacement volumes, and other update materials shipped not later than seventy-five (75) days as required by Paragraph 4.1, shall give rise to a discount on purchases of the Code, supplements, individual volumes, replacement volumes, and index volumes. Unless waived by the Commission, the amount of the discount shall be equal to one percent (1%) of the price for each of those Code products for each period of three (3) working days or less by which shipment is late. The additional discount shall be in effect through the end of the calendar year in which the failure to meet the deadline occurs.

## 6. COPYRIGHT.

### 6.1 General.

(a) The work of the Publisher on the Code, the CD-ROM Edition, and other publications covered under this Agreement is work made for hire for the purposes of the copyright laws of the United States, and shall be and remain the sole and exclusive property of the State of Georgia, acting through the Commission.

(b) All the contents of the Code, including all supplements and replacement volumes, the CD-ROM Edition, and those parts of any other publications required by this Agreement or authorized by the Commission that incorporate Code copyrightable materials, to the extent of such incorporation, shall be copyrighted in the name of the State of Georgia, acting through the Commission, and all copyrights thereto shall be vested, held, and renewed in the name of the State of Georgia, acting through the Commission. The copyrights shall cover all copyrightable parts of the Code in all relevant media, including print and electronic forms.

(c) The Publisher, on behalf of the Commission and in the name of the State of Georgia as copyright owner, shall take all necessary actions to obtain and register a copyright on any new or additional materials prepared for the Code and other publications. In addition, the Publisher shall take all necessary actions to renew any existing copyrights on the Code, the CD-ROM Edition, and Code materials in the name of the State of Georgia, acting through the Commission. The Publisher shall annually provide evidence of the registration or renewal of all copyrights to the Commission staff.

(d) The Publisher shall cooperate with and assist in the defense or initiation of any actions relating to the copyright rights referenced in this Agreement.

(e) The Commission shall be the sole entity of the State that may exercise control over the State's copyright on the Code, the CD-ROM Edition, and Code materials.

### 6.2 Notice of Copyright.

(a) Any publication of the Code or portions of the Code shall identify it as the "Official Code of Georgia Annotated" or a selected portion thereof without any additional qualifier or name that would indicate to a user that the Code is not a State copyrighted publication, and shall include notice of the State's copyright.

(b) The Publisher shall label the CD-ROM Edition, both in documentation and on an initial screen which is displayed before a user obtains access to the Code, with the following statement:

"The Code Revision Commission of the State of Georgia, as holder of the copyright to the Official Code of Georgia Annotated, has licensed the use of the Code by

\_\_\_\_\_ on this CD-ROM (or DVD) version. This CD-ROM (or DVD) version contains a merged version of the Code in which the material in the supplements has been merged with the material in the case bound, printed volumes of the Code to form a single data base. In the event of any discrepancy or difference between the Code contained on the CD-ROM (or DVD) version and the Code contained in the printed volumes and supplements, the printed volumes and supplements shall control."

## **7. SUPERVISION.**

If there is any disagreement as to material to be included in the Code or as to any codification, annotation or other matter of editorial content, the Publisher shall abide by and follow the decision of the Commission as communicated by the Commission staff. If there is any other dispute between the Publisher and the Commission concerning publication of the Code or the Publisher's duties or performance under this Agreement, the decision of the Commission shall prevail.

## **8. RIGHTS TO PUBLISH AND SELL.**

### **8.1 Publisher's Right to Publish and Sell.**

(a) Except as otherwise provided in this Agreement, the Publisher is granted the exclusive right to distribute and sell in printed, bound book format sets and volumes of the Code as well as the exclusive right to publish, distribute, and sell printed annual supplements and periodic printed replacement volumes to the Code from March 2, 2007 through the term of this Agreement. Notwithstanding any rights granted pursuant to this Agreement, the Commission retains all rights to grant to others the right to use captions, catchlines, history lines, and other components of the Code, CD-ROM Edition, and on-line version.

(b) From December 1, 2006 through March 1, 2007, the Publisher is granted non-exclusive rights to distribute and sell any inventory of the Code that the Publisher purchases from the preceding publisher pursuant to Section 2-6-7 of the Agreement dated December 2, 1998 between the State of Georgia, acting through its Code Revision Commission, and LEXIS Law Publishing, provided, however, that this provision shall be inapplicable in the event that the Publisher is the same as, or a successor-in-interest to, the preceding Publisher.

(c) Ninety days prior to the termination of the Publisher's right to sell and distribute the Code under this Agreement, a successor publisher shall have non-exclusive rights to distribute and sell any inventory of the Code that the successor publisher purchases pursuant to subparagraph (c) of Paragraph 9.6. During this same period, the Publisher shall have non-exclusive rights to distribute and sell any existing inventory of the Code that the successor publisher does not purchase.

### 8.2 State Agencies.

(a) Notwithstanding the provisions of Paragraph 8.1, any department or agency of the state shall have the right to reproduce and distribute or sell any one or more titles or parts of titles of the Code (including annotations, indexes, editorial notes, and other material referred to in Paragraph 1.3 of this Agreement) which are administered by, or substantially related to the administration of, that department or agency. Any such use of copyrighted material by a department or agency of the state shall contain the appropriate copyright notices showing the state's copyright in the selected portions of the Code.

(b) Subparagraph (a) of this Paragraph does not impose any burdens or responsibilities on the Publisher nor does it preclude the Publisher from entering into a separate agreement, or agreements, with any department or agency of the state to reproduce and distribute or sell on behalf of such department or agency any one or more titles or parts of titles of the Code, including any editorial material in which the state owns the copyright. Any such use of copyrighted material by the Publisher or by a department or agency of the state shall contain the appropriate copyright notices showing the state's copyright in the selected portions of the Code.

### 8.3 Reprint of Selected Portions.

The Publisher is granted the right to reprint selected portions of copyrighted material from the Code in other publications it might publish for use by the bench and bar of Georgia; e.g., a practice manual which includes selected statutes annotated from the Code, which right shall survive the expiration of this Agreement. Any such use of copyrighted material by the Publisher shall contain the appropriate copyright notices showing the state's copyright in the selected portions of the Code.

### 8.4 CD-ROM.

(a) The State of Georgia grants the Publisher the exclusive right to publish, distribute, market, sell, and sublicense for publication, distribution, marketing, and sale, CD-ROM Editions of the Code.

(b) The State of Georgia grants the Publisher the right to license, distribute, and market the CD-ROM Edition and services described herein to all interested parties.

(c) The Publisher is granted the right to republish selected portions of copyrighted material from the Code in other electronic publications it might publish for use by the bench and bar of Georgia; e.g., a practice manual which includes selected statutes and annotations from the Code.

(d) The Commission grants the Publisher the right to grant sublicenses to publish,



distribute, market, and sell CD-ROM and DVD versions of either the Code, a limited portion of the Code consisting of the text of Code sections plus the captions, catchlines, and history lines, or selected portions of the Code, in accordance with the provisions of this Section 8. The Publisher shall, subject to the terms and conditions of a License Agreement provided by or approved by the Commission, grant such sublicenses to any entities desiring to obtain them. The Publisher shall furnish each such sublicensee a current edition of the Code, or portion thereof, as appropriate, in electronic data base format, in accordance with the terms and conditions of the applicable License Agreement. A License Agreement shall be executed by and between the Publisher and any such sublicensee, and the Publisher shall file a copy of any such executed License Agreement with the Commission no later than 10 days after execution by all the parties thereto. The Publisher shall not grant any sublicense to any entity for publication, distribution, marketing, and sale of CD-ROM versions of either the Code or portions thereof other than by execution of a License Agreement provided by or approved by the Commission.

(e) After the end of each quarter, the Publisher shall make payment to the State of Georgia in an amount equivalent to the percentage specified in Exhibit D of the sum of all licensing fees received by the Publisher during the quarter just ended under any and all License Agreements executed pursuant to subparagraph (d) of this Paragraph. Such payments shall be made no later than thirty (30) days after the end of each quarter.

(f) Concurrent with any payment made pursuant to subparagraph (e) of this Paragraph, the Publisher, by and through a knowledgeable officer of the company having responsibility for accurate reporting of all revenues received by the Publisher, shall make an affidavit under penalty of false swearing and misappropriation of state funds, and submitting to the jurisdiction of the Superior Court of Fulton County, Georgia, stating that the amount of the payment made to the State of Georgia is equivalent to the percentage specified in Exhibit D of the sum of all fees received by the Publisher during the quarter just ended under any and all License Agreements executed pursuant to subparagraph (d) of this Paragraph.

(g) Neither the Commission, the State of Georgia, or any official, officer, employee, or agent thereof shall be responsible or liable in any way for the accuracy of material contained in any electronic data base version furnished by the Publisher pursuant to this Paragraph, and no warranty therefor, express or implied, shall be created as a result of this Agreement. Any License Agreement entered into by the Publisher shall be subject to this subparagraph.

#### **8.5 Online Licensees.**

(a) The Commission grants the Publisher the right to create electronic data bases containing the Code and to license the use of the Official Code of Georgia Annotated by on-line licensees, as approved by the Commission. The Publisher is authorized to contract with on-line licensees for the use of such materials in the creation and operation of computer data bases of the Official Code of Georgia Annotated, provided that such use shall be subject to the provisions of this Paragraph.

(b) The Publisher agrees to furnish to each on-line licensee the Code in electronic data base format compiled and updated at the Publisher's expense and with no cost to the State of Georgia.

(c) The Publisher agrees to pay to the State of Georgia an annual license fee of the amount specified in Exhibit D for each on-line licensee using the Official Code of Georgia Annotated pursuant to this Paragraph plus a variable royalty in an amount equal to the percentage specified in Exhibit D of the gross receipts the on-line licensee receives from its use of the Official Code of Georgia Annotated on such on-line service.

(d) The Publisher agrees to make the Official Code of Georgia Annotated and revisions and updates thereto available in electronic format to all on-line licensees simultaneously.

(e) The rights granted to the Publisher to furnish electronic data base versions to all on-line licensees by this Section 8 shall expire upon the expiration or termination of this Agreement.

(f) All sums due the State of Georgia pursuant to this Paragraph shall be payable no later than thirty (30) days after the end of each quarter of each year for the duration of this Agreement. The Commission shall have the right to an accounting for all funds due under this Agreement.

(g) Concurrent with any payment made pursuant to subparagraph (f) of this Paragraph, the Publisher, by and through a knowledgeable officer of the company having responsibility for accurate reporting of all revenues received by the Publisher, shall make an affidavit under penalty of false swearing and misappropriation of state funds, and submitting to the jurisdiction of the Superior Court of Fulton County, Georgia, stating that the amount of the payment made to the State of Georgia is equivalent to any annual license fees received as specified in Exhibit D for each on-line licensee plus a variable royalty in an amount equal to the percentage specified in Exhibit D of the gross receipts the on-line licensee receives from its use of the Official Code of Georgia Annotated on such on-line service received by the Publisher during the quarter just ended under any and all licensing contracts entered into pursuant to this Paragraph.

(h) There shall be no automatic renewal of the agreement contained in this Paragraph.

(i) Neither the Commission, the State of Georgia, nor any official, officer, employee, or agent thereof shall be responsible or liable in any way for the accuracy of material furnished by the Publisher pursuant to this Paragraph, and no warranty, express or implied, shall be created as a result of this Paragraph.

(j) Any contract between the Publisher and any on-line licensee shall be subject to this Paragraph and other terms of this Agreement. All contracts between the Publisher and an on-line licensee shall be in a form approved by the Commission prior to entering into the contract.

#### **8.6 Reservation of Rights.**

(a) Other than those rights expressly granted the Publisher in this Agreement, all right, title, and interest in and to the Code and all materials comprising the Code, including without limitation those materials prepared and created by the Publisher for inclusion in the Code, shall remain with the State of Georgia and the Publisher is granted no rights with respect to the Code other than as expressly set forth in this Agreement. Any and all rights granted to the Publisher in this Agreement with respect to the Code are to be construed as a license and such license shall not limit the ability of the State of Georgia to grant or enter into other licenses or Agreements not in conflict with the licenses granted in this Agreement.

(b) Except as otherwise provided in this Agreement, the Commission shall have the exclusive right to sell, license, or otherwise permit the Publisher or third parties to use the Code in any electronic, microfilm, microform, or other format. Except as otherwise provided in this Agreement, the Publisher shall not have any right to distribute the Code in electronic or other format or to sell, license, or otherwise permit third parties to use the Code in electronic or other format, except to the extent that such rights may be granted to the Publisher by the Commission upon such terms as may be approved by the Commission.

### **9. TERM AND TERMINATION.**

#### **9.1 Term.**

This Agreement shall take effect December 1, 2006, and shall remain in effect until March 1, 2012, unless terminated earlier pursuant to this Section 9. The Commission retains an option to renew this Agreement for a five-year term or on a year-to-year basis on or after March 1, 2012.

#### **9.2 Termination for Cause.**

(a) The Commission may terminate this Agreement for cause whenever the Commission determines that the Publisher has failed to perform one (1) or more of its contracted duties and responsibilities in a timely and proper manner or in a manner satisfactory to the Commission, or if the Publisher fails to adhere to any of the terms of this Agreement, and the Publisher is unable to cure the failure within a reasonable period of time as specified by the Commission. This termination shall be known as "termination for cause."

(b) If there is termination for cause as provided by this Paragraph, the Commission may procure, upon such terms and in such manner as the Commission deems appropriate, services

similar to those terminated, and the Publisher shall be liable to the Commission for any excess costs for those similar services. In addition, the Publisher shall be liable to the Commission for administrative costs or other damages incurred by the Commission in procuring those similar services. The Commission agrees to negotiate in good faith to procure those similar services at a reasonable cost.

(c) The rights and remedies of the Commission provided in this Paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. Notwithstanding the above, the Publisher shall not be relieved of its liability to the Commission for damages sustained by virtue of breach of this Agreement by the Publisher.

### **9.3 Termination for Convenience.**

(a) The Commission may terminate this Agreement for convenience without cause by giving written notice to the Publisher at least ninety (90) days before the effective date of the termination, if for any reason the Commission determines, in its sole discretion, that the termination is in the best interest of the State.

(b) If the Commission terminates this Agreement for convenience, it shall allow the Publisher to complete and sell publications previously authorized and begun as of the date of notice of termination. In addition, the Commission agrees to license Code material to the Publisher for electronic publication until such time as a successor publisher begins providing electronic publication of the Code.

### **9.4 Force Majeure.**

Performance of any duty on the part of the Publisher may be excused by the Commission in its sole discretion if it determines in writing that the performance of the specified duty was prevented by fire, strike, flood, war, act of God or other circumstances beyond the control of the Publisher.

### **9.5 Termination of Rights.**

Upon expiration or termination of this Agreement, all rights granted to the Publisher under this Agreement will cease and terminate. Further, upon termination of this Agreement the Publisher will cease all publication and sale of the Code, CD-ROM Edition, and on-line licensing except as otherwise provided in this Section 9. The Publisher will have the right to sell its remaining inventory of the Code in accordance with the terms and conditions of subparagraph (c) of Paragraph 9.6 and will have the right to license, market, and sell its remaining inventory of the CD-ROM Edition for a period of 120 days following expiration or termination of this Agreement. Neither party hereto will be liable to the other party hereto for damages, losses,

costs, or expenses of any kind or character whatsoever arising from the termination or expiration of this Agreement whether such damages, losses, costs, or expenses arise from the loss of prospective sales or expenses incurred or investments made in connection with the establishment, development, or maintenance of the Publisher's business or any other reason whatsoever; provided, however, that such termination or expiration will not affect any claim, demand, liability, or right of either party hereto arising pursuant to this Agreement prior to such termination or expiration or after such termination or expiration in connection with the sale by the Publisher of its remaining inventory of the Code and CD-ROM Edition.

#### **9.6 Transition.**

(a) If this Agreement expires or is terminated pursuant to this Section 9, the Publisher shall cooperate in any transition to a successor publisher.

(b) Ninety days prior to the termination of the Publisher's right to sell and distribute the Code under this Agreement, the Publisher shall provide to the Commission for use by the Commission and the successor publisher a complete, then current list of the Publisher's subscribers to the Code.

(c) Ninety days prior to the termination of the Publisher's right to sell and distribute the Code under this Agreement, the Publisher agrees to sell its existing inventory of the Code or such portion of its existing inventory of the Code as the successor publisher wishes to purchase to the successor publisher at the Publisher's cost, including all manufacturing and editorial costs, not to exceed 80 percent of the retail prices. Any dispute as to the Publisher's inventory cost shall be resolved through good faith negotiations between the Publisher and the successor publisher.

### **10. MISCELLANEOUS.**

#### **10.1 Documents Incorporated.**

The Publisher agrees to perform the duties and obligations described in the RFP, as amended if applicable, and the Publisher's Technical Proposal ("Proposal"), which are hereby incorporated into this Agreement by reference and attached as Exhibits A and B; however, the Commission is not bound by any provision of the Proposal. If there is any actual conflict, the documents shall govern in the following descending order of superiority:

(a) This agreement;

(b) RFP amendments and addenda (Answers to questions submitted pursuant to Sections 1.2 and 1.3 of the RFP);

(c) The RFP;

(d) The Proposal.

#### **10.2 Amendments.**

This Agreement may be amended from time to time upon mutual agreement of the Commission and the Publisher. All amendments shall be made in writing, and fully executed by duly authorized representatives of both parties.

#### **10.3 Contract Cannot be Assigned.**

The Publisher shall not assign, delegate or subcontract this Agreement or any part of this Agreement without the prior written consent of the Commission. The Commission's consent to the performance of such obligations by third parties shall in no way release the Publisher from responsibility for the performance of any obligations under this Agreement. In no event shall any publications under this Agreement, including but not limited to Code sets, annual update sets, volumes, supplements, or other materials, be printed, bound, or produced outside of the continental United States.

#### **10.4 Entire Agreement.**

This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior oral and written agreements. This Agreement may not be amended or modified, except by a further written agreement signed by the parties hereto.

#### **10.5 Counterparts.**

This Agreement may be executed in two (2) counterparts, each of which shall constitute an original, but both of which taken together shall constitute only one (1) instrument.

#### **10.6 Headings.**

Section and paragraph headings in this Agreement are for convenience only and shall not affect the interpretation or construction of this Agreement.

**10.7 Financial Responsibility.**

The Publisher shall submit satisfactory evidence to the Commission staff of its compliance with the requirement to obtain a One Million Dollar (\$1,000,000.00) performance bond, and of the approval of the bond by the Commission.

**10.8 Additional Remedies.**

The Publisher agrees that its obligations set forth in this Agreement and the restrictions on its use, publication, sale, and distribution of the Code, CD-ROM Edition, and on-line version are reasonable and necessary to protect and preserve the interests and properties of the State of Georgia; and that irreparable loss and damage will be suffered by the State of Georgia should the Publisher breach any of its obligations or restrictions with respect to the Code, CD-ROM Edition, and on-line version. Therefore, the Publisher agrees and consents that, in addition to all the remedies provided at law or in equity, the State of Georgia will be entitled to a temporary restraining order and temporary and permanent injunctions to prevent a breach or contemplated breach of any of the covenants. The existence of any claim, demand, action, or cause of action of the Publisher against the State of Georgia shall not constitute a defense to the enforcement by the State of Georgia of any of the covenants or agreements herein.

**10.9 Indemnification.**

(a) The Publisher agrees to protect, indemnify, save and hold harmless the Commission, the State, all State agencies, departments, boards, commissions and institutions, and all officers, agents, servants and employees of the State, from any and all claims, demands, damages, judgments, and liability arising directly or indirectly out of this Agreement, and from any and all costs, expenses and attorneys' fees (including costs of work done by the Georgia Attorney General or his designees) incurred as a result of any claim, demand, lawsuit or cause of action; however, the Publisher shall not be responsible for any claim, demand, damage, judgment or liability arising from the negligent or willful conduct of the Commission or the State.

(b) The Commission or the State or any official, officer, employee, or agent thereof shall not be liable to any third party who is licensed to use any on-line version, electronic version, or CD-ROM of the Code. The Publisher shall save and hold the Commission and the State harmless from any and all claims, demands, damages, judgments, and liability arising directly or indirectly out of the use of any on-line version, electronic version, or CD-ROM of the Code, including the use of any data that the Publisher has provided to the Commission; however, the Publisher shall not be responsible for any claim, demand, damage, judgment or liability arising from the negligent or willful conduct of the Commission or the State.

(c) The Commission shall give the Publisher written notice of any such claim, demand or lawsuit, if the Commission is notified first, and full right and opportunity to conduct the Publisher's defense of the claim, demand or lawsuit. However, the Commission does not accord to the Publisher, through its attorneys, any rights to represent the Commission, the State, any State agency, department, board, commission or institution, or any officer, agent, servant or employee of the State, in any legal matter.

**10.10 Non-Discrimination.**

No person shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of the Publisher under this Agreement or in the employment practices of the Publisher on the grounds of disability, age, race, color, religion, sex, national origin or any other classification protected by federal or Georgia constitutional or statutory law. The Publisher, upon request, shall show proof of such non-discrimination and shall post in conspicuous places, available to all employees and applicants, notices on non-discrimination.

**10.11 Interpretation and Venue.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia. Any controversy arising under, or in relation to, this Agreement shall be resolved in accordance with the laws of Georgia and the Publisher hereby consents to the jurisdiction of the Superior Court of Fulton County, Georgia. The Publisher further consents that any process or notice of motion or other application to the court or any judge thereof may be served upon the Publisher by service upon the Secretary of State of Georgia, with a copy of such being forwarded to the Publisher by the Secretary of State via registered mail.

**10.12 Prohibited Payments.**

The Publisher warrants that no part of the total Agreement amount shall be paid directly or indirectly to an employee or an official of the State as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Publisher in connection with any work contemplated or performed under this Agreement.

**10.13 Financial Responsibility.**

Notwithstanding any provision in this Agreement to the contrary, in no event is the State or the Commission financially responsible to the Publisher under this Agreement.



